

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JOHNNY JACKSON,

Plaintiff,

v.

Case No. 2:08-cv-20
HON. R. ALLAN EDGAR

UNKNOWN PELKOLA, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation filed by the United States Magistrate Judge in this action on October 29, 2009, recommending summary judgment for the defendants. The Report and Recommendation was duly served on the parties. The Court has received objections from petitioner. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff has asserted that defendant Pelkola retaliated against him by rubbing plaintiff's toothbrush inside his toilet. Plaintiff claims that when he examined his toothbrush there was a wet brown mildew substance on the bristles. Plaintiff claims that he was also verbally harassed and failed to receive a meal. During plaintiff's deposition, he stated that the sole reason for the retaliation was because he had masturbated in the presence of defendant Pelkola and other female employees. Masturbation is not constitutionally protected conduct. Plaintiff has changed his position since his deposition and maintains that defendants' retaliation was not in response to his masturbating.

Plaintiff claims that he engaged in protected conduct when he gave witness statements to prisoners who had filed grievances against corrections officers. Plaintiff has failed to provide any details regarding this claim of protected conduct. Plaintiff has not provided copies of his statements or explained his statements or indicated which corrections officers may have been involved. Further, plaintiff has not established that defendant Pelkola's alleged misconduct was motivated by the assertion that plaintiff had provided a witness statement against some corrections officer in support of some other prisoner's grievance. Similarly, plaintiff has not established a violation of his equal protection rights.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge is approved and adopted as the opinion of the court.

IT IS FURTHER ORDERED that defendants' second motion for summary judgment (Docket #45) is GRANTED and this case will be dismissed in its entirety. The Court can discern no good-faith basis for an appeal. Accordingly, an appeal of this action would not be taken in good faith.

FINALLY, it is ordered that plaintiff's motions for writs of habeas corpus *ad testificandum* (Docket ## 54 and 55) and to appoint counsel (Docket #58) are DENIED.

Dated: 9/13/2010

/s/ R. Allan Edgar
R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE